

Donald G. Norris (SBN 90000)
dnorris@norgallaw.com
Douglas F. Galanter (SBN 93740)
dgalanter@norgallaw.com
NORRIS & GALANTER LLP
523 West Sixth St., Suite 716
Los Angeles, CA 90014
Telephone: 213.232.0855
Facsimile: 213.286.9499

BLECHER COLLINS PEPPERMAN & JOYE, P.C.
MAXWELL M. BLECHER (SBN 26202)
mblecher@blechercollins.com
Donald R. Pepperman (SBN 109809)
dpepperman@blechercollins.com
Theo "John" Giovanni Arbucci (SBN 249811)
jarbucci@blechercollins.com
515 South Figueroa Street, 17th Floor
Los Angeles, California 90071-3334
Telephone: 213.622-4222
Facsimile: 213.622.1656

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JESUS PIMENTEL, DAVID R.
WELCH, JEFFREY O'CONNELL,
EDWARD LEE, WENDY COOPER,
JACLYN BAIRD, ANTHONY
RODRIGUEZ, RAFAEL BUELNA,
ELEN KARAPETYAN, and all
persons similarly situated,

Plaintiffs,

vs.

CITY OF LOS ANGELES,

Defendant.

Case no. CV 14-01371-FMO (Ex)

SECOND AMENDED CLASS
ACTION COMPLAINT FOR
DAMAGES, RESTITUTION,
DECLARATORY AND
INJUNCTIVE RELIEF FOR:

1. VIOLATIONS OF THE
EXCESSIVE FINES CLAUSE OF
THE UNITED STATES
[42 U.S.C. § 1983];

2. VIOLATION OF THE
EXCESSIVE FINES CLAUSE OF
THE CALIFORNIA
CONSTITUTION

1 Plaintiffs, individually and on behalf of the class of similarly situated
2 persons identified in this second amended complaint, allege as follows:

3 JURISDICTION AND VENUE

4 1. This is a class action seeking damages, restitution and declaratory
5 and injunctive relief for violations by the City of Los Angeles of the Excessive
6 Fines Clause of the United States Constitution and the analogous provisions of
7 the California Constitution, arising from the City charging those who receive
8 tickets for expired parking meters disproportionately excessive penalties.

9 2. The action arises under 42 U.S.C. §1983. Jurisdiction is conferred
10 upon this Court by 28 U.S.C. §§ 1331 and 1343. Supplemental jurisdiction
11 exists over plaintiffs' state law claims under 28 U.S.C. § 1367.

12 3. In July 2013 plaintiffs Jesus Pimentel and David R. Welch duly
13 served claims against defendant under the appropriate California Government
14 Code sections. On information and belief, defendant failed to timely respond, so
15 those claims were denied as a matter of law.

16 4. Venue is proper under 28 U.S.C. § 1391(b).

17 PARTIES

18 5. Plaintiffs Jesus Pimentel, David R. Welch, Edward Lee, Jaclyn
19 Baird, Anthony Rodriguez, Rafael Buelna and Elen Karpetyan are individuals
20 residing in the City of Los Angeles or other parts of the County of Los Angeles.

21 6. At all times herein mentioned defendant City of Los Angeles
22 ("City") was and is a municipal corporation duly organized and existing under
23 the laws of the State of California.

24 FACTS

25 7. Plaintiff Jesus Pimentel ("Pimentel") worked for restaurants in 2013
26 in the City of Los Angeles. His job duties required him to pick up and deliver
27 food and other supplies, so he frequently had to search for parking and park on
28 City streets. On the afternoon of May 29, 2013 plaintiff Pimentel parked his car

1 on Eighth Street in downtown Los Angeles. Pimentel paid the parking meter
2 where he parked a sum of money he estimated would be sufficient to cover the
3 time period that he intended to park. On information and belief at approximately
4 3:10 p.m. that same afternoon a City employee issued parking citation number
5 4207863903 to Pimentel for an expired parking meter under section 88.13(b) of
6 the Los Angeles Municipal Code (the "Code") because the parking meter had
7 expired. Under section 89.60 of the Code the initial penalty was set at \$63.00.

8 8. On or about June 21, 2013 the City issued and then mailed to
9 Pimentel a Notice of Delinquent Parking Violation advising that the due date to
10 pay the initial \$63.00 penalty was July 5, 2013. Said Notice also warned that
11 failure to pay the parking penalties by the due date "will result in the City of Los
12 Angeles imposing increased penalties and the withholding of your vehicle
13 registration by the Department of Motor Vehicles." The Notice further advised
14 that the "City may also subject your vehicle to immobilization (booting) or
15 impoundment (CVC 22651.7, 22651(i), or a civil judgment (CVC 40220)."

16 9. Pimentel did not pay the initial \$63.00 penalty by the July 5, 2013
17 due date because he did not then have the funds to pay without jeopardizing his
18 ability to pay more critical financial obligations. On information and belief the
19 City then likely mailed another notice to Pimentel on a date unknown to
20 plaintiffs assessing an additional 100% penalty, pursuant section 89.60 of the
21 Code, so that the cumulative penalties increased to \$126.00. Pimentel did not
22 pay that sum at that time due to financial hardship.

23 10. Because Pimentel had not paid the \$126.00, on information and
24 belief, or about August 23, 2013 the City mailed Pimentel a "Delinquent Status"
25 notice under section 89.60(b) of the Code, which purported to impose an
26 additional, third penalty of \$28 under section 89.60(b) of the Code (although
27 that section provides for an additional penalty of \$26), increasing the "total fine
28 and penalty" to \$154.00. This notice further assessed an additional \$21.00

1 “collection fee” on Pimentel, and advised that the “total due” was \$175.00. The
2 notice further advised that “**The Department of Motor Vehicles has been**
3 **notified to withhold registration of your annual vehicle registration** pending
4 resolution of the citations” and that “If you have delinquent citations, your
5 vehicle may be seized.” Finally, the notice advised that failure could subject
6 Pimentel “to further collection activity such as a civil judgment or an
7 interception of your state tax refunds.” Pimentel did not pay that sum at that
8 time due to financial hardship.

9 11. Pimentel eventually paid the \$175.00 “total due” to the Department
10 of Motor Vehicles due to the threat and coercion of not being able to register his
11 car.

12 12. On the morning of February 25, 2013 plaintiff David R. Welch
13 (“Welch”) parked his car in downtown Los Angeles. Welch paid the parking
14 meter where he parked a sum of money he estimated would be sufficient to
15 cover the time period he intended to park. On information and belief at
16 approximately 10:13 a.m. that same morning a City employee issued parking
17 citation number 4202676203 to Welch for an expired parking meter under
18 section 88.13(b) of the Los Angeles Municipal Code (the “Code”) because the
19 parking meter had expired. As with the case of Pimentel, under section 89.60 of
20 the Code the initial penalty was set at \$63.00.

21 13. On information and belief, within the following 30 days it is likely
22 that the City issued and then mailed to Welch a “Notice of Delinquent Parking
23 Violation” advising as to the due date to pay the ticket. Said Notice also warned
24 that failure to pay the parking penalties by the due date “will result in the City of
25 Los Angeles imposing increased penalties and the withholding of your vehicle
26 registration by the Department of Motor Vehicles.” The Notice further advised
27 that the “City may also subject your vehicle to immobilization (booting) or
28 impoundment (CVC 22651.7, 22651(i), or a civil judgment (CVC 40220).”

1 14. Welch did not pay the initial \$63.00 penalty by the due date. On
2 information and belief the City then likely mailed another notice to Welch on a
3 date unknown to plaintiffs, assessing, as occurred with Pimentel, an additional
4 100% penalty, pursuant section 89.60 of the Code, so that the cumulative
5 penalties increased to \$126.00.

6 15. Because Welch had not paid the \$126.00, on or about May 23, 2013
7 the City mailed Welch a “Delinquent Status” notice under section 89.60(b) of
8 the Code (as it did as to Pimentel), which purported to impose an additional
9 third penalty of \$28 under section 89.60(b) of the Code (although that section
10 provides for an additional penalty of \$26), increasing the “total fine and penalty”
11 to \$154.00. This notice assessed an additional \$21.00 “collection fee” on
12 Welch, and advised that the “total due” was \$175.00. The notice further advised
13 that “**The Department of Motor Vehicles has been notified to withhold**
14 **registration of your annual vehicle registration** pending resolution of the
15 citations” and that “If you have delinquent citations, your vehicle may be
16 seized.” Finally, the notice advised that failure could subject Welch “to further
17 collection activity such as a civil judgment or an interception of your state tax
18 refunds.”

19 16. On or about July 30, 2013, Welch paid the \$175.00 “total due,” due
20 to the threats and coercion of not being able to register his car, having his car
21 impounded, being referred to collections and receiving a negative credit report.

22 17. On information and belief, at all relevant times the City’s uniform
23 procedures have been to assess the parking fines and penalties for alleged
24 violation of section 89.60 of the Code and to send the notices for said violation
25 and to timely pay fines and penalties that are alleged above as to Pimentel and
26 Welch.

27 18. During the times relevant hereto plaintiff Jeffrey O’Connell
28 (“O’Connell”) was self-employed as a professional musician, and as a

1 handyman. O'Connell needed his vehicle to transport himself and his drums and
2 other musical equipment to and from locations where he practiced or performed
3 music, and to transport himself and tools to and from locations where he
4 performed repairs as a handyman.

5 19. O'Connell received several parking meter tickets in the City during
6 the past two years, which incurred the same fines and penalties as those alleged
7 as to Pimentel and Welch. In some cases O'Connell received tickets as to
8 parking meters that were broken, out of order or that would not accept money.
9 O'Connell did not have the financial wherewithal to pay these tickets, or the
10 penalties and fees assessed as to them.

11 20. O'Connell eventually entered into an installment payment plan with
12 the City to pay these, and some other parking tickets that he received, but
13 ultimately he was financially unable to make the scheduled payments. Due to
14 the number of unpaid tickets, including the parking meter tickets he received,
15 O'Connell's car was towed by the City and impounded. O'Connell did not have
16 the financial wherewithal to pay to retrieve his vehicle. O'Connell has suffered
17 lost income and financial hardship as a result of not having his vehicle.

18 21. Plaintiff Edward Lee ("Lee"), a resident of the City of Burbank, a
19 former United States Marine, worked as a security guard starting in 2004, until
20 being laid off recently. Lee needed a vehicle to travel to and from work
21 locations.

22 22. Lee received multiple parking meter tickets in the City in 2013. Lee
23 struggled to make ends meet. Lee made payments on the parking meter tickets,
24 but he could not afford to pay them on time. Nor could or can Lee afford the
25 late penalties and fees imposed by the City.

26 23. Plaintiff Wendy Cooper ("Cooper"), who resides in the Sherman
27 Oaks neighborhood of the City, received a ticket in 2013 for an expired parking
28 meter in the Studio City neighborhood of the City, citation no. 4220759830.

1 During August of 2013, her elderly father became extremely ill, and then died
2 on December 1, 2013. Do to these extenuating circumstances, Cooper missed
3 the due date for paying the ticket due to her elderly father (who died in
4 December 2013) becoming gravely ill.

5 24. Cooper makes a modest income as a self-employed musical voice
6 teacher. Paying the late penalties and fees would be financially difficult for
7 Cooper. On January 2, 2014, Cooper contacted the City Parking Violations
8 Bureau and requested that the late penalties and fees be waived. Cooper was
9 advised to send a letter explaining her situation and to include payment for the
10 original penalty amount of \$63, along with proof of her father's circumstances,
11 which she did. Cooper, however, received no response to her letter.

12 25. Plaintiff Jaclyn Baird ("Baird") is a young woman who moved to Los
13 Angeles from Montana after graduating from school in May 2013. Baird
14 received approximately three City parking meter tickets shortly thereafter in the
15 area near the beach where she was living, where parking is scarce. Baird could
16 not afford to pay the tickets and still pay her rent and other necessary expenses.
17 Baird later was unable to register her car because of the ticket penalties and fees
18 assessed by the City.

19 26. Baird then moved to the Hollywood area where parking is also hard
20 to come by. On January 17, 2014 Baird received a parking meter violation ticket
21 at 1802 Sunset Boulevard in the Echo Park area. Because Baird was unable to
22 pay the ticket on time she had to pay \$151, which imposed a financial hardship
23 on her.

24 27. On February 2, 2014 Baird received a parking violation meter ticket
25 at 1165 Lemoyne Street in the Echo Park area. Because she was unable to pay
26 the initial penalty on time, Baird was assessed an additional \$63 and then paid a
27 total of \$126, which imposed a financial hardship on her. On May 14, 2014 and
28

1 May 23, 2014 Baird received additional parking meter tickets near Hollywood
2 which she was financially unable to pay.

3 28. Baird's car was then impounded due in substantial part to not paying
4 her parking meter tickets, and the penalties and fees assessed on them. Baird
5 could not pay the approximately \$1300 required to release her vehicle. Baird
6 suffered further damages as a result of her vehicles being impounded.

7 29. Plaintiff Anthony Rodriguez ("Rodriguez") is a veteran living in the
8 Mission Hills neighborhood of the City. Rodriguez received a ticket for an
9 expired parking meter on January 22, 2014 at 11039 McCormick Street in the
10 North Hollywood area of the City, citation no. 4225588791. Rodriguez received
11 the ticket even though he had put sufficient coins in the parking meter to cover
12 the time period that he parked.

13 30. Within 15 days of issuance of the ticket Rodriguez went to the Van
14 Nuys office of the City Parking Violations Bureau to contest the ticket.
15 Rodriguez filled out and submitted an "Initial Review Request." He also
16 requested a copy of the parking meter service record and the citing officers'
17 performance record.

18 31. Even though he had paid with coins and not a credit card,
19 approximately one week later, Rodriguez received a letter in the mail from the
20 Parking Violations Bureau requesting that he provide his credit card statement
21 showing payments made to the City for parking at the meter on January 22,
22 2014.

23 32. Eventually the City responded to Rodriguez's review request with a
24 denial that the meter had been operating improperly. Because Rodriguez had
25 provided plaintiffs' counsel's name and address to the City its response was
26 mailed to counsel's address after the date this action was filed. In that
27 connection the City decided to waive late penalties on the ticket. But Rodriguez
28 was still required to pay the initial \$63 penalty (plus a \$2 processing fee), which

1 he paid on May 2, 2014, due to the threats and coercion of not permitting his car
2 to be registered, having his car impounded, being reported to collections and
3 receiving a negative credit report. Said payment imposed a financial hardship
4 on him.

5 33. On January 17, 2014 plaintiff Rafael Buelna ("Buelna") received a
6 parking ticket for an expired meter from the City, citation 4224433905, at 3150
7 Los Feliz Boulevard. However, Buelna had clearly displayed his disabled
8 placard, which was hanging from the rear view mirror, so he should not have
9 received the ticket.

10 34. Buelna lives on a fixed income of \$1110 per month from Social
11 Security Disability. After paying \$835 for rent, Buelna is left with \$276 for the
12 rest of the month to live on. Buelna planned to pay the initial \$63 fine on his
13 parking ticket by April 2014 by saving \$20 from three Social Security checks.
14 However, by March 21, 2014 the fine/penalty had doubled. Recently the City
15 sent notice that the total allegedly owed is \$175. Such a sum imposes an
16 egregious hardship as to Buelna.

17 35. Plaintiff Elen Karapetyan ("Karapetyan") is a college student who
18 also works. She received six parking meter violation tickets from the City on
19 the following dates: 09/10/13, 09/12/13, 10/10/13, 11/06/13, 12/03/13 and
20 12/04/13. Karapetyan could not afford to pay these tickets timely, so the City
21 assessed \$175 in penalties and fees as to each of them. Karapetyan then paid off
22 two of those \$175 charges, under the threats and coercion of not being able to
23 register her vehicle, having her vehicle impounded, being referred to collections
24 and receiving a negative credit report. Paying the remainder of the tickets
25 imposed a financial burden on her.

26 36. On information and belief the aforesaid penalties under section 89.60
27 of the Code were established by the City through its City Council within the last
28 four years, as part of a schedule of civil parking penalties (the "Schedule"). At

1 that same time the penalties were established under section 89.60 for failing to
2 pay a parking meter and for an expired parking meter.

3 37. On information and belief, the parking penalties set by the Schedule
4 greatly exceed the amounts for penalties established by the City in prior years
5 for the same parking violations, reflecting an approximate 50% increase. On
6 information and belief, the City was in substantial part improperly motivated to
7 increase the amount of parking penalties on the Schedule in order to increase its
8 revenues and improve its fiscal situation in response the fallout from the 2008-
9 2009 economic crisis.

10 38. California Vehicle Code section 40203.5 subdivision (a) empowers
11 the governing body of a municipal entity to establish the schedule of parking
12 penalties for parking violations and late payment penalties. That provision
13 further directs such governing bodies to “standardize parking penalties” with
14 other parking ticket issuing agencies within the same county, to the extent
15 possible.” On information and belief, the City in its Schedule charges
16 substantially higher penalties than many neighboring cities in Los Angeles
17 County have charged during the relevant time period. For example, on
18 information and belief, the City of Pasadena has charged \$46.00 for an initial
19 parking meter penalty and an additional \$27.90 penalty for failure to timely pay
20 the initial penalty. The \$73.90 Pasadena total is \$52.10 less than the \$126.00
21 total for the City. Similarly, on information and belief, the City of Glendale has
22 charged an initial \$44.00 penalty for a parking meter violation and another
23 \$44.00 for failure to timely pay the initial penalty. The \$88.00 Glendale total is
24 \$38.00 less than the \$126.00 total for the City. Plaintiffs do not concede that the
25 penalties assessed by Pasadena and Glendale are not likewise grossly
26 disproportionate to the underlying offenses, but this comparison of their charges
27 is instructive as to the disproportionality of the City’s penalties.
28

1 39. According to City-Data.com, the median per capita income in the
2 City was \$26,096 for all residents in 2009 and \$13,542 for Hispanic/Latinos.
3 According to that source the median household income in 2009 was \$48,617
4 (and \$38,868 for Hispanic/Latino households), with 8.2% earning less than
5 \$10,000, 13.1% earning between \$10,000 and \$20,000, 11.2% earning between
6 \$20,000 and \$30,000, 9.9% earning between \$30,000 and \$40,000, and 8.9%
7 earning between \$40,000 and \$50,000. These figures have not significantly
8 increased since 2009. The rate of poverty in the City substantially increased
9 since 2008 and remains at historically elevated levels.

10 40. At all relevant times the unemployment rate in the City has been at
11 historically very high levels, and continues at very high rates. The cost of
12 housing in the City is also very high relative to many other parts of California
13 and most other states.

14 41. As to those who either reside or work in the City, at all relevant times
15 up to June of 2014, the minimum hourly wage was \$8.00 under California state
16 law, a sum subject to substantial paycheck tax deductions and contributions
17 required by law. The \$63 initial penalty set by the City for parking meter
18 violations was at all relevant times essentially equivalent to the wages of a
19 worker who earned the minimum wage and working an eight-hour day. The
20 100% penalty the City has assessed for the failure to timely pay the initial
21 penalty is likewise equivalent to the wages of a worker earning the minimum
22 wage and working an eight-hour day. The \$175 sum assessed if the \$126 in
23 penalties are not timely paid approaches the wages of a worker earning that
24 minimum wage and working three eight-hour days, and well exceeds those
25 wages, net of tax deductions and contributions required by law.

26 42. A very substantial percentage of person who receive City expired
27 parking meter tickets, many of whom live paycheck to paycheck if they work at
28 all, are financially unable to pay the \$63 initial penalty, or the second \$63

1 penalty, let alone the \$175 “total due” amount that accompanies a City
2 “Delinquent Status” notice.

3 43. In fact, in the context of permitting an individual to request an
4 “Administrative Hearing” as to the validity of a ticket (that is, after denial of an
5 “initial review”), without first paying the penalties due, the website of the City’s
6 Parking Violation Bureau/Department of Transportation Parking Adjudication
7 Services defines a member of a “low income household” as an individual (1)
8 receiving public assistance agency benefits, (2) whose family gross yearly
9 income is less than \$39,000 for a one-person family, less than \$44,500 for two
10 people, less than \$50,100 for three people, and less than \$55,700 for four people,
11 or (3) whose income is not enough to pay for the common necessities of life for
12 the person and the people the person supports and also pay for parking fines.
13 These very same criteria establish that a very high percentage of the persons
14 who receive parking meter tickets are financially unable to pay them, or the late
15 penalties and fees assessed as to them.

16 44. On information and belief, the City charges variable rates to purchase
17 parking time at its parking meters depending on the meter’s location or “zone.”
18 For example, in downtown’s financial district meters may charge more to park.
19 But, on information and belief, even at the higher zone rates a person paying for
20 meter parking can purchase six minutes of time for \$.50, 18 minutes of time for
21 \$1.50, 30 minutes of time for \$3.00, and an hour of time for \$5.00. Under those
22 rates, a person receiving a City parking meter ticket for an expired meter who is
23 less than six minutes over the purchased time could have avoided the ticket by
24 paying an additional \$.50, a person receiving a City parking meter ticket for an
25 expired meter who is just under 18 minutes over the purchased time could have
26 avoided the ticket by paying an additional \$1.50, a person who receives a City
27 parking meter ticket for an expired meter who is just under 30 minutes over the
28 purchased time could have avoided the ticket by paying an additional \$3.00, and

1 a person receives a City parking meter ticket for an expired meter who is just
2 under an hour over the purchased time could have avoided the ticket by paying
3 and additional \$5.00. In most cases, the City's \$63.00 initial penalty for an
4 expired parking meter ticket bears no reasonable relationship to the culpability
5 of persons who receive parking meter expiration tickets: the penalty is 130
6 times the additional amount a person who is less than five minutes over the
7 meter would have had to pay to avoid the ticket, over 43 times the additional
8 amount a person who is less than 18 minutes over the meter would have had to
9 pay to avoid the ticket, 21 times the additional amount a person who is less than
10 30 minutes over the meter would have had to pay to avoid the ticket, and over
11 12 times the additional amount a person who is less than 60 minutes over the
12 meter would have had to pay to avoid the ticket. In lower zone areas where it is
13 cheaper to park these multipliers necessarily are proportionally higher.
14 Moreover, the second 100% \$63 late payment penalty effectively doubles the
15 above multipliers.

16 45. The parking meter expiration penalties are unreasonable and
17 oppressive, and grossly disproportionate to the seriousness of the violation of the
18 City ordinance barring parking at a meter beyond the time paid to park, as well
19 as to those who receive tickets for parking at a meter without paying at all.
20 Imposition of these penalties is particularly onerous as to and disproportionately
21 affects low income or even average income workers in the Los Angeles area, as
22 well as those low income persons who do not work, relative to those better off
23 financially, because they are not as well positioned to pay the penalties or the
24 collection fees, and disproportionately suffer financial injury if they do pay
25 them. Such persons also disproportionately suffer the inability to register a
26 vehicle, vehicle impoundment or booting, the City reporting such persons to
27 credit reporting bureaus, and the City's pursuit of civil judgments for failure to
28 pay.

CLASS ACTION ALLEGATIONS

46. This action is brought as a class action by the individual named as plaintiffs, on behalf of themselves and on behalf of the class defined in this complaint, pursuant to Rule 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure.

47. This class is defined as all persons who are or were assessed and/or paid the penalties under the Schedule for parking at an unpaid or expired meter described above. Excluded from the class are all employees, including, but not limited to, judges, magistrate judges, clerks and court staff and personnel, of the United States District Court, their spouses, and any minor children living in their households. Plaintiffs will seek to establish subclasses under Federal Rule of Civil Procedure 23(c)(5) if and when appropriate.

48. The proposed class meets the prerequisites of Fed. R. Civ. P. 23. Rule 23(a) provides that a class action may be brought when the class is so numerous that joinder of all parties is impracticable, there are questions of law or fact common to the class, the claims or defenses of the representative parties are typical of the claims or defenses of the class, and the representative parties will fairly and adequately protect the interests of the class. This action is properly maintainable as a class action for the reasons set forth below.

49. The exact numbers of members of the class identified in the preceding paragraphs, for whose benefit this action is brought, are not presently known but are so numerous that joinder of individual members in this action is impracticable. The exact number of class members can only be ascertained through discovery, because such information is in the exclusive control of City. However, on information and belief, and based on the nature of the activities alleged herein, plaintiffs reasonably believe that the proposed class would contain thousands if not tens of thousands of members. The names and addresses of class members are readily obtainable from the City.

1 51. There is a well-defined community of interest in the questions of
2 law and fact with regard to the proposed classes. Questions of law and fact
3 arising out of the City's conduct are common to all members of the class, and
4 such common issues of law and fact predominate over any questions affecting
5 only individual members of the class. Common issues of law and fact which are
6 common to all members of all classes include: (a) Whether the parking penalties
7 assessed by the City constitute "excessive fines" under the United States and
8 California constitutions; (b) appropriate equitable relief; (c) whether the City
9 should refund the unlawful portion of the payments it collected as damages or
10 restitution; (d) whether unpaid assessed penalties should be forgiven; and (e)
11 whether the City should be enjoined from further collection of said penalties and
12 collection fees.

13 52. The class representative plaintiffs are asserting claims that are
14 typical of the claims of the members of the class they seek to represent, in that
15 they all have been assessed and/or have paid the unconstitutional parking
16 penalties. There is no conflict between any class representative and other
17 members of the class with respect to this action, and the class representative
18 plaintiffs are not aware of any individualized defenses that may be raised by the
19 City that impair each representative's ability to act on behalf of the class.
20 Plaintiffs as representative parties, will fairly and adequately protect
21 the interests of the class by vigorously pursuing this suit through attorneys who
22 are skilled and experienced in handling matters of this type. Plaintiffs
23 understand and appreciate their duties to the class and are committed to
24 vigorously protecting the rights of absent class members.

25 53. By consistently assessing and insisting on payment of the unlawful
26 penalties the City has acted on grounds generally applicable to the class, thereby
27 making declaratory and injunctive relief appropriate with respect to the
28 class as a whole. See Fed. R. Civ. P. 23(b)(2).

1 54. Class certification is also appropriate under Fed. R. Civ. P.
2 23(b)(3). The questions of law or fact common to each member of the class
3 predominate over any questions affecting only individual members. A class
4 action is superior to other available methods for a fair and efficient adjudication
5 of the claims asserted herein given that, among other things: (i) significant
6 economies of time, effort, and expense will inure to the benefit of the Court and
7 the parties in litigating the common issues on a class-wide instead of a repetitive
8 individual basis; (ii) the size of most class members' individual damage claims
9 is too small to make individual litigation an economically viable alternative,
10 such that few class members have any interest in individually pursuing
11 prosecution of a separate action; (iii) without the representation provided by
12 plaintiffs herein, few, if any, class members will receive legal representation or
13 redress for their injuries; (iv) class treatment is required for optimal deterrence;
14 (v) despite the relatively small size of many individual class members' claims,
15 their aggregate volume, coupled with the economies of scale inherent in
16 litigating similar claims on a common basis, will enable this case to be litigated
17 as a class action on a cost effective basis, especially when compared with
18 repetitive individual litigation; (vi) no unusual difficulties are likely to be
19 encountered in the management of this class action; (vii) absent a class action,
20 the City will likely retain and will continue to collect millions of dollars, and its
21 illegal and unfair conduct would go unremedied and uncorrected; and (viii)
22 absent a class action, the class members will continue to suffer losses, and the
23 City will be allowed to continue to assess and collect illegal penalties.

24 55. Plaintiffs contemplate such notice to the class as may be
25 appropriate under Fed. R. Civ. P. 23(c)(2).
26
27
28

1 FIRST CLAIM FOR RELIEF UNDER 42 U.S.C. § 1983
2 FOR VIOLATION OF THE EIGHTH AND FOURTEENTH
3 AMENDMENTS TO THE UNITED STATES CONSTITUTION

4 (by individual plaintiffs and plaintiff class)

5 56. Plaintiffs repeat and reallege and incorporate by reference each and
6 every allegation in paragraphs 1 through 55, inclusive, of this complaint as if
7 fully set forth herein.

8 57. In light of the minor nature of the violations and their financial
9 effect on members of the plaintiff class, the aforementioned parking penalties
10 are punitive in nature, and are grossly excessive and disproportionate,
11 particularly when accumulated and/or added to the \$21.00 “collection fee,” and
12 given the City’s threats of an inability to re-register a vehicle, vehicle booting
13 and impoundment, and referral to collections and a credit reporting bureau. The
14 dollar amount and enforcement of these penalties constitute a violation of the
15 prohibition in the Eighth Amendment to the United States Constitution of
16 excessive fines, as incorporated to the states in the Fourteenth Amendment.

17 58. As a direct result of said constitutional violations on the part of the
18 City plaintiffs and members of the plaintiff class have suffered and will suffer
19 damages, including, but not limited to, the loss of money and property, and the
20 loss of use and enjoyment of their vehicles.

21 59. Plaintiffs and the members of the plaintiff class will suffer
22 immediate and irreparable injury for which there is no adequate remedy at law if
23 the aforementioned penalties and policies to enforce them are allowed to
24 continue. Plaintiffs and the class members seek injunctive relief, both
25 preliminary and permanent, to stop the City unlawful conduct described above.

26 60. There is a real and actual controversy between the parties as to
27 whether the parking meter penalties described above and their enforcement
28 violate the Eighth and Fourteenth Amendment’s prohibition of excessive fines.

1 Plaintiffs maintain that the penalties and their enforcement violate the excessive
 2 fines clause of the Eighth and Fourteenth Amendments, which the City disputes.
 3 This imposition of, and continued effort to collect, these penalties constitutes a
 4 legal injury which is concrete and particularized. It is likely that these injuries
 5 will be fairly addressed by a favorable Court ruling. Plaintiffs and the members
 6 of the plaintiff class therefore seek declaratory relief in order to declare the
 7 penalty scheme unconstitutional, and that they did not and do not owe and need
 8 not pay said penalties and attendant collection costs, and are entitled to
 9 restitution of them if they were paid.

10 SECOND CLAIM FOR RELIEF
 11 FOR VIOLATION OF THE EXCESSIVE FINES PROVISION OF
 12 ARTICLE 1, SECTION 17 OF THE CALIFORNIA CONSTITUTION

13 (by individual plaintiffs and plaintiff class)

14 61. Plaintiffs repeat and reallege and incorporate by reference each and
 15 every allegation in paragraphs 1 through 60, inclusive, of this second amended
 16 complaint as if fully set forth herein.

17 62. This claim for relief is brought under the California Constitution.

18 63. The dollar amount and enforcement of the penalties constitute a
 19 violation of the prohibition in the Article 1, Section 17 of the California
 20 Constitution against the imposition of excessive fines.

21 64. The City has been unjustly enriched to the extent plaintiffs and
 22 members of the plaintiff class paid penalties and collection fees that violated
 23 Article 1, Section 17 of the California Constitution.

24 65. Plaintiffs and the members of the plaintiff class will suffer
 25 immediate and irreparable injury for which there is no adequate remedy at law if
 26 the aforementioned penalties and policies to enforce them are allowed to
 27 continue. Plaintiffs and the class members seek injunctive relief, both
 28 preliminary and permanent, to stop the City unlawful conduct described above.

66. There is a real and actual controversy between the parties as to whether the parking meter penalties described above and their enforcement violate the prohibition in Article 1, Section 17 of the California Constitution against the imposition of excessive fines. This imposition of, and continued effort to collect, these penalties constitutes a legal injury which is concrete and particularized. It is likely that these injuries will be fairly addressed by a favorable Court ruling. Plaintiffs and the members of the plaintiff class therefore seek declaratory relief in order to declare the penalty scheme unconstitutional, that they did not and do not owe and need not pay the penalties and attendant collection fees, and are entitled to restitution of them if they were paid.

PRA YER

WHEREFORE, plaintiffs pray for judgment against defendant, as follows:

1. That the Court determine that the claims for relief herein may be maintained as a class action;
2. for injunctive relief prohibiting defendant's unlawful fines and fine enforcement practices;
3. for declaratory relief;
4. for damages as to the First Claim for Relief, according to proof;
5. for restitution;
6. for pre-judgment interest; and
7. for costs of the suit incurred herein, including attorney fees and other expenses pursuant to 42 U.S.C. § 1988 and California Code of Civil Procedure § 1021.5; and
8. for such other and further relief as the Court may deem just and proper.

1 Dated: October 12, 2015

NORRIS & GALANTER LLP

2 BLECHER COLLINS PEPPERMAN & JOYE,

3 P.C.

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5 By /s/
Donald G. Norris
6 Attorneys for plaintiffs
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